IN THE

Supreme Court of the United States

No. [redacted]—October Term, 1958

127

ALBERTIS S. HARRISON, JR., ATTORNEY GENERAL OF VIRGINIA, *et al.*,

Appellants,

—v.—

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation, and NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INCORPORATED, a Corporation,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, RICHMOND DIVISION

MOTION TO AFFIRM

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Appellees in the above-entitled case move to affirm on the ground that the questions presented are so unsubstantial as not to need further argument.

Opinion Below

The opinion of the three-judge United States District Court for the Eastern District of Virginia, Richmond Division, is reported at 159 F. Supp. 503 (1958), *sub nom. National Association for the Advancement of Colored People* v. *Patty,* and is printed in Appellants' Appendix in their Statement of Jurisdiction at pages 1-95.[1]

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[1] Appellants' Appendix in their Statement of Jurisdiction is hereafter referred to as J.S., App.

Jurisdiction

Appellees adopt the section on "The Jurisdiction of the Court" in appellants' Statement of Jurisdiction at page 1. The three statutes involved are printed verbatim at J.S., App. page 95.

Questions Presented

Appellees adopt the "Questions" as presented by appellants at page 3 of their Statement of Jurisdiction.

Statement of the Case

Appellees, the National Association for the Advancement of Colored People (the Association) and the NAACP Legal Defense and Educational Fund (the Fund) filed separate complaints in the district court against the Attorney General of Virginia and five Commonwealth's Attorneys who are charged by law with the enforcement of one or more of the various provisions of certain legislation enacted by the General Assembly of Virginia at the 1956 Extra Session. Both complaints sought judgment declaring the invalidity of Chapters 31, 32, 33, 35 and 36 of the Act of said Extra Session of the General Assembly on the ground that they abridged rights secured under the equal protection and due process clauses of the Fourteenth Amendment, the First Amendment and the Commerce Clause of the Federal Constitution. The complaints also sought injunctions restraining defendants from enforcing these statutes.

On April 30, 1958 the court below entered its judgment declaring Chapters 31, 32 and 35 unconstitutional and enjoined their enforcement on the ground that they violated the requirements of equal protection and due process.

Chapters 33 and 36 were retained on the docket for a reasonable time to allow plaintiffs an opportunity to proceed in the state courts to secure an interpretation of these two statutes.

Statement of the Facts

Appellees disagree with the facts recited in appellants' Statement of Jurisdiction and adopt the statement of facts set forth in the opinion of the court below at J.S., App. pages 1-10.

"The Statutes"

The three statutes involved in this appeal may be summarized as follows: Chapter 31 prohibits a corporation from soliciting or expending funds to commence or continue proceedings to which it is not a party and in which it has not a pecuniary right or liability unless it annually files with the State Corporation Commission the names and addresses of its members; also, detailed information must be filed with respect to its income, expenditures and activities, including a certified statement showing the source of every contribution or other items of income during the preceding calendar year plus, if requested, the name and address of every contributor. Noncompliance subjects a corporation to a $10,000 fine, for which each director, officer, or other person responsible for the management or control of appellee's affairs may be held personally liable; to revocation of its authority to do business in Virginia; and to a court order enjoining its activities. Moreover, any individual acting as an agent or employee of the corporation is deemed guilty of a misdemeanor and fined $500 or sentenced to 12 months imprisonment or both.

Chapter 32 requires annual registration of any corporation which has as one of its principal functions or activi-

ties the advocating of racial integration or which raises or expends funds for the employment of counsel or payments of costs in connection with litigation in Virginia on behalf of any race or color. In order to register, each such corporation (save those which conduct their activities solely through the mails or other media for interstate communications and those which engage in a political campaign or political activities connected with it) must supply for public inspection detailed data itemizing, *inter alia*, the names and addresses of its members, the source of each contribution or other income received during the preceding calendar year, and the object of each expenditure for the same period. Noncompliance with these requirements subjects corporations and individuals to the penalties and liabilities imposed by Chapter 31; in addition, this statute provides that each day's failure to register is a separate offense punishable as such.

Chapter 35 creates and punishes the offense of barratry. Barratry is defined as instigating litigation, i.e., bringing about a suit at law or in equity in which all or part of the expenses of the litigation are defrayed by a "nonparty," i.e., a person or corporation which has no direct interest (personal right or pecuniary right or liability) in the subject matter of the litigation, and occupies no position of trust in relation to the plaintiff, and is not duly constituted as a legal aid society approved by the Virginia State Bar. The Act also provides that it does not apply to contingent fee contracts, and excepts from its provisions in effect all suits challenging state action save those involving the civil or constitutional rights of Negroes. The punishment provided for barratry is $500 fine or a year's imprisonment, or both; if the barrator is a corporation, a $10,000 fine and revocation of its authorization to do business in Virginia as a foreign corporation applies.

REASON FOR GRANTING THE MOTION: THE QUESTIONS PRESENTED ARE UNSUBSTANTIAL

I.

The Court below was unquestionably correct in holding Chapters 31, 32, and 35 unconstitutional as they clearly violate the Fourteenth Amendment and Article III, Section 2 of the Constitution of the United States.

It cannot be gainsaid that in advocating and seeking the betterment of the Negro's status in America, appellees' members and contributors are invoking their constitutionally protected rights of free speech and free association guaranteed under the due process clause of the Fourteenth Amendment. *National Association for the Advancement of Colored People* v. *Alabama*, —— U. S. ——, 26 L. W. 4489, decided June 30, 1958. Nor are appellees' activities outside the area of state restriction or prohibition absent some overriding valid interest of the State. *National Association for the Advancement of Colored People* v. *Alabama, supra*; See *Sweezy* v. *New Hampshire*, 354 U. S. 234, 265, 266; *Watkins* v. *United States*, 354 U. S. 178, 250-251; *United States* v. *Rumley*, 354 U. S. 41; *Wieman* v. *Updegraff*, 344 U. S. 183, 196.

Appellants' justification for requiring a list of appellees' members and contributors under Chapter 32 is as follows: (1) to help in law enforcement (Tr. 422, 426, 446, 468); (2) to help in the selection of deputies, and prevent deputizing a person participating actively in an organization agitating violence (Tr. 431, 452-453, 469, 475); (3) to identify certain known troublemakers and their associates (Tr. 468, 502); (4) to keep a check on agitators from outside the community (Tr. 452, 468, 474); (5) to possibly deter agitators from coming in the community (Tr. 469); (6) to

curb race tension that might ultimately lead to violence (Tr. 502); (7) to deter the breach of public or private rights (Tr. 502); (8) to make the names a matter of public record so that direct responsibility could be placed on the organizations and the individuals engaging in any of the activities they undertook to do (Tr. 521).

Chapter 31's demand for a list is justified as an aid in detecting those persons who are engaging in barratry, maintenance, unauthorized practice of law, and related offenses (Tr. 558-559).

Desirable as it may be for the state to be able to detect law violators, to suppress racial violence and tensions, and to avoid racial antagonisms, such ends may not be achieved by denying rights secured by the Constitution. *Morgan* v. *Commonwealth of Virginia*, 328 U. S. 373, 380; *Ex parte Endo*, 323 U. S. 283, 302; see *Korematsu* v. *United States*, 323 U. S. 214, 216; *Buchanan* v. *Warley*, 245 U. S. 60, 81; *Lonesome* v. *Maxwell*, 220 F. 2d 386 (4th Cir. 1955) aff'd, 350 U. S. 877; *City of Birmingham* v. *Monk*, 185 F. 2d 859 (5th Cir. 1950), cert. den. 341 U. S. 940.

Also, the record discloses an uncontroverted showing that persons identified with or dedicated to appellees' causes have been subjected to harassment, intimidation, loss of employment, and other manifestations of public hostility (Tr. 171, 173, 176-8, 184-7, 193-201, 205, 209-212, 218-225, 229-232). Under circumstances similar to these, this Court upheld the right to preserve from disclosure the names and addresses of persons dedicated to appellees' aims:

> We think that the production order, in the respects here drawn in question, must be regarded as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association. Petitioner has made an uncontroverted

showing that on past occasions revelation of the identity of its rank-and-file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of physical coercion, and other manifestations of public hostility. Under these circumstances we think it apparent that compelled disclosure of petitioner's Alabama membership is likely to affect adversely the ability of petitioner and its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate, in that it may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure. *National Association for the Advancement of Colored People* v. *Alabama, supra,* at 4493.

Thus, the court below, appellees submit, was eminently correct in striking down legislation which would produce the same reprisals and impinge the same First Amendment rights.

Moreover, the list of exceptions set forth in §9 of Chapter 32 excludes from the operation of the statute every conceivable group but those (like appellees) involved in the field of racial discrimination. To make the statute applicable only to persons who engage in advocating racial integration is in effect to penalize them for such advocacy in violation of First Amendment protections. See *Speiser* v. *Randall,* —— U. S. ——, 26 L. W. 4479, 4480, decided June 30, 1958.

There can be no question that corporate businesses may be formed not only for the purpose of engaging in free speech, *Grosjean* v. *American Press Co.,* 287 U. S. 233, but also for the purpose of aiding others through the extension

of charity, *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123.

The crime of barratry is so defined in Chapter 35, however, that appellees' activities, which are essential to the exercise of their members' and contributors' basic First Amendment freedoms, are thereby made criminal. When appellees take concerted action in the form of sponsorship of litigation by furnishing counsel and sharing expenses, these organizations are exercising the rights of their members and contributors to freedom of expression on public issues and the right to pool their resources for their mutual benefit. Cf. *Sweezy* v. *New Hampshire, supra;* see *Watkins* v. *United States, supra* at pp. 250-251; *Wieman* v. *Updegraff, supra; United States* v. *Rumley, supra,* at 46; *Murdock* v. *Pennsylvania,* 319 U. S. 105; *Follet* v. *McCormick,* 321 U. S. 573; cf. *United States* v. *C. I. O.,* 335 U. S. 106, 143-144 (concurring opinion).

In Virginia, since both the legislative and executive branch of the government oppose elimination of state enforced racial restrictions, the only avenue of redress for one seeking to remove such restrictions is access to the courts. The primary right of Virginia residents to resort to the federal courts for relief from state imposed racial segregation stems from the Constitution itself. See Article III, Section 2, Clause 1. The right of persons to resort to federal courts for protection against unlawful state action has been recognized and applied by this Court in a long line of cases, including *Terral* v. *Burke Construction Co.,* 257 U. S. 529; *Truax* v. *Corrigan,* 257 U. S. 312, 334; *Barbier* v. *Connally,* 113 U. S. 27, 31; *Slaughter House Cases,* 83 U. S. (16 Wall.) 36; and *Crandall* v. *Nevada,* 73 U. S. (6 Wall.) 35, 44. Moreover, this right was specifically and expressly secured by the Civil Rights Acts[2] which give a right

[2] E.g., Title 42, United States Code, §§1971, 1981, 1982, 1983.

of action at law or in equity to every person deprived of a Constitutional right by one acting under color of state law, and confer jurisdiction upon the federal district courts to hear and determine such cases. Title 28 U. S. C. §1343 (3).

Implied in this right of access to the federal courts is the right to assist, and the right to accept assistance, when necessary to adequately present the issues to these courts. The question of state imposed racial segregation is of great public interest, and litigation attacking such discrimination is too costly for the average individual litigant to bear. By the provisions of Chapter 35, Negroes are denied the right to obtain financial or legal assistance in this kind of litigation. To leave the federal courts open only to litigants able to finance such cases is to effectively close the door to the great majority of aggrieved Negro citizens.

It has long been recognized that charitable or nonprofit organizations may proffer legal assistance to persons unable to bear the costs of litigation or where important public issues are involved. See *In re Ades*, 6 F. Supp. 467, 478 (D. Md. 1934); *Gunnels* v. *Atlanta Bar Assn.*, 191 Ga. 366, 12 S. E. 2d 602; *Irving* v. *Neal*, 209 F. 471, 475 (S. D. N. Y. 1913); *Wheeler* v. *Denver*, 229 U. S. 342, 351. See also *Canon 35, Canons of Professional Ethics of the American Bar Association; Opinion of A. B. A. Committee on Professional Ethics and Grievances*, Opinion 148 (1935); *First Congregational Church* v. *Evangelical & R. Ch.*, 160 F. Supp. 651 (S. D. N. Y. 1958); *Aiken* v. *Insull*, 122 F. 2d 746, 749 (7th Cir. 1941), cert. den. 315 U. S. 806; *Rinderknecht* v. *Toledo Association of Credit Men*, 13 F. Supp. 555, 557 (N. D. Ohio 1936); *Jahn* v. *Champagne Co.*, 157 F. 407, 418 (W. D. Wisc. 1908) aff'd 168 F. 510 (7th Cir. 1909); *Mexican Nat. Coal, Timber & Iron Co.* v. *Frank*, 154 F. 217, 224 (C. C. S. D. Tex. 1907); *Consumers' Gas Co.* v. *Quinby*, 137 F. 882, 893 (7th Cir. 1905), cert. den. 198 U. S. 585;

Thallhimer v. *Brinckerhoff*, 3 Cow. 623, 15 Am. Dec. 308 (N. Y. Court of Errors, 1824).[3] By failing to recognize this well settled rule, Chapter 35 establishes prerequisites and requirements for the conduct of litigation which are contrary to one of the basic tenets upon which our legal system is predicated. The action of the state, therefore, in denying appellees the right to pursue their normal and lawful activities is patently arbitrary and discriminatory in contravention of the due process clause of the Fourteenth Amendment. See *Schware* v. *Board of Bar Examiners*, 353 U. S. 232; *Konigsberg* v. *State Bar of California*, 353 U. S. 252; *Slochower* v. *Board of Education*, 350 U. S. 551; *Wieman of Updegraff*, 344 U. S. 183; *Pierce* v. *Society of Sisters*, 268 U. S. 510.

Attorneys who cooperate with appellees are engaged in the lawful and legitimate pursuit of their professions. Cf. *Meyers* v. *Nebraska*, 262 U. S. 390; *Bartels* v. *Iowa*, 262 U. S. 404; *Schware* v. *Board of Bar Examiners, supra; Konigsberg* v. *State Bar of California, supra.* In the *Schware* case, *supra*, this Court said at pages 238-239:

> A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process and Equal Protection Clause of the Fourteenth Amendment.

A fortiori, a state cannot impose restrictions on the practice of law or prohibit practice in certain cases in a manner or for reasons inconsistent with the guarantees of due process and equal protection.

Furthermore, Chapter 35 exempts from its operation a large number of groups which similarly engage in collec-

[3] Of course these principles do not apply where a sharing of profit is involved. *See* McCloskey v. Tobin, 252 U. S. 107.

tive activities to secure rights through litigation and whose activities in this regard do not differ from the activities of appellees. The effect of the discrimination is to designate as criminal the activities of these organizations in sponsoring litigation while permitting the identical activity by others, thus denying to the appellees the equal protection of the laws. *Cotting* v. *Kansas City Stock Yards Co.*, 183 U. S. 79. Cf. *Morey* v. *Doud*, 354 U. S. 457; *Yick Wo* v. *Hopkins*, 118 U. S. 356.

For these reasons it is clear that Chapters 31, 32 and 35 violate the equal protection and due process clauses of the 14th Amendment as well as Article III, Section 2 to the federal Constitution.

II.

The Court below did not abuse its equitable discretion in entertaining the instant suits for declaratory judgments and injunctive relief or in restraining the enforcement of the criminal statutes involved.

Appellees, their members, contributors, employees, and lawyers to whom they may contribute money toward defraying fees and expenses incident to litigation involving the legality of racial discrimination clearly violate Chapters 31, 32, and 35 in the course of their routine day to day activities. These statutes prohibit the continuance of appellees' business by (1) declaring illegal "non-party" aid to litigants seeking to secure constitutional rights against racial discrimination, and (2) requiring disclosure of members' and contributors' names and addresses as a prerequisite to any and all activities concerning racial integration, including solicitation of funds from the public to defray the costs of litigation involving the legality of racial discrimination. Appellees of necessity rely upon public support and contributions for their continued existence.

Not only do these statutes place a "cloud of illegality" over all of appellees' activities, but also (in view of the present climate of opinion in Virginia) compliance would expose appellees' members and contributors to harassment, abuse and economic reprisals (J.S., App. pp. 20-22). Thus, even in the absence of enforcement of these "emergency" statutes by state officials, the statutes visit great and immediate danger of irreparable loss upon appellees by depriving them of public support, contributions and members, seriously impairing the organizations and threatening their destruction. Cf. *Pierce* v. *Society of Sisters*, 268 U. S. 510; *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365, 386.

It is therefore clear that the complaints herein requesting declaratory judgments on constitutional questions involve "'concrete legal issues, presented in actual cases, not abstractions,' . . . [where complainants] require[d] the use of . . . judicial authority for their protection against actual interference." *United Public Workers* v. *Mitchell*, 330 U. S. 75, 89, 90. Moreover, injunctive relief restraining the enforcement of the criminal statutes herein was indicated and properly granted in view of the "'exceptional circumstances' and 'great and immediate' danger of irreparable loss" as alleged in the complaints and shown at the hearing. See *Watson* v. *Buck*, 313 U. S. 387, 401; see also *American Federation of Labor* v. *Watson*, 327 U. S. 582, 593, 595; *Douglas* v. *Jeannette*, 319 U. S. 157, 164; *Spielman Motor Sales Co.* v. *Dodge*, 295 U. S. 89, 95; *Fenner* v. *Boykin*, 271 U. S. 240, 243; *Truax* v. *Raich*, 239 U. S. 33, 37-38.

"Exceptional circumstances" are present in addition to those previously discussed. First, since the statutes cover numerous activities and classifications of persons, a multiplicity of suits would be required to determine their con-

stitutionality if the complaints in the case at bar had been dismissed. See *Beal* v. *Missouri Pacific R. Corp.*, 312 U. S. 45, 49. Secondly, members and contributors could not litigate the validity of the registration requirements without revealing their identity. Thirdly, the heavy penalties provided by the statutes inhibit access to the courts for judicial determination of the constitutionality of the statutes by placing such a high price on inviting or awaiting actual prosecution. See *Ex parte Young*, 209 U. S. 123, 147-148; see also *Missouri P. R. Co.* v. *Tucker*, 230 U. S. 340, 347; *Wadley S. R. Co.* v. *Georgia*, 235 U. S. 651, 661-666; *Oklahoma Operating Co.* v. *Love*, 252 U. S. 331, 336-338; *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 287-288; *Terrace* v. *Thompson*, 263 U. S. 197, 216; *Gibbs* v. *Buck*, 307 U. S. 66, 76-78; *Public Utilities Co.* v. *United Fuel Gas Co.*, 317 U. S. 456, 468-469; *Yakus* v. *United States*, 321 U. S. 414, 437-438. Indeed the whole panoply of state government is arrayed against appellees and their members and contributors (J.S., App. pp. 12-20).

The court below, therefore, was eminently correct in its disposition of appellants' argument in the following manner:

> The defendants also invoke the familiar rule that ordinarily a court of equity will not restrain a criminal prosecution based on a state statute, even if the constitutionality of the statute is involved, since this question can be raised and settled in the criminal case with review by the higher court as well as in a suit for an injunction, Douglas v. City of Jeannette (Pennsylvania), 319 U. S. 157, 163, 164, 63 S. Ct. 877, 87 L. Ed. 1324, and this is especially true where the only threatened action is a single prosecution of an alleged violation of state law. However, it is also well recognized that a criminal prosecution may be enjoined

under exceptional circumstances where there is a clear showing of danger of immediate irreparable injury, Spielman Motor Sales Co. v. Dodge, 295 U. S. 89, 95, 55 S. Ct. 678, 79 L. Ed. 1322, Beal v. Missouri Pacific R. Corp., 312 U. S. 45, 49, 61 S. Ct. 418, 85 L. Ed. 577. It is obvious that the present case falls in the latter category. The penalties prescribed by the statutes are heavy and they are applicable not only to the corporation but to every person responsible for the management of its affairs, and under Chapter 32 of the statutes each day's failure to register and file the required information constitutes a separate punishable offense. The deterrent effect of the statutes upon the acquisition of members, and upon the activities of the lawyers of the plaintiffs under the threat of disciplinary action has already been noted, and the danger of immediate and persistent efforts on the part of the state authorities to interfere with the activities of the plaintiffs has been made manifest by the repeated public statements. The facts of the cases abundantly justify the exercise of the equitable powers of the court. Ex parte Young, 209 U. S. 123, 147, 28 S. Ct. 441, 52 L. Ed. 714; Truax v. Raich, 239 U. S. 33, 36 S. Ct. 7, 60 L. Ed. 131; Western Union Telegraph Co. v. Andrews, 216 U. S. 165, 30 S. Ct. 286, 54 L. Ed. 430; Sterling v. Constantin, 287 U. S. 378, 53 S. Ct. 190, 77 L. Ed. 375 (J.S., App. pp. 31-32).

It is submitted that there is no merit in appellants' contentions and that the facts and applicable law in the instant cases amply warranted the district court's granting the injunctive relief requested. *Terrace* v. *Thompson*, 263 U. S. 197, 214.

III.

The Court below did not abuse its equitable discretion in enjoining the enforcement of the state statutes involved although they had not been authoritatively construed by the state courts.

The District Court was plainly right in deciding the constitutional issues presented by Chapters 31, 32, and 35 without previous construction of these statutes by the state courts.

This appeal does not derive substance from the doctrine of abstention, recently restated in *Government and Civic Employees Organizing Committee* v. *Windsor*, 353 U. S. 364, 366, that:

> In an action brought to restrain the enforcement of a state statute on constitutional grounds, the federal court should retain jurisdiction until a definitive determination of local law questions is obtained from the local courts.

This doctrine is a principle of judicial self-limitation rather than a rule enervating jurisdiction. *Doud* v. *Hodge*, 350 U. S. 485. As such, its application is confined to the situations justifying its existence. See *Propper* v. *Clark*, 337 U. S. 472; *Meredith* v. *Winter Haven*, 320 U. S. 228. And it has no application where, as here, "there is neither need for interpretation of the statutes nor any other special circumstance requiring the federal court to stay action pending proceedings in State courts." *Toomer* v. *Witsell*, 334 U. S. 385, 392 note. See also *Bryan* v. *Austin*, 148 F. Supp. 563, 567-568 (E. D. S. C. 1957, dissenting opinion), vacated as moot 354 U. S. 933.

This case does not present any "special circumstance" warranting state court proceedings within the abstention

rationale as applied by the cases from which it developed. Unlike *Burford* v. *Sun Oil Co.*, 319 U. S. 315, and *Pennsylvania* v. *Williams*, 294 U. S. 176, the District Court was not called upon to address itself to "a specialized aspect of a complicated system of local law outside the normal competence of a federal court," *Alabama Public Service Commission* v. *Southern Ry.*, 341 U. S. 341, 360 (concurring opinion), but rather to an issue which by Congressional enactments the district courts are peculiarly endowed to entertain. 28 U. S. C. §1343. It is not a case involving any special application of local law to be preliminarily resolved before the Federal constitutional questions are reached. Cf. *American Federation of Labor* v. *Watson*, 327 U. S. 582; *Spector Motor Co.* v. *McLaughlin*, 323 U. S. 101; *Railroad Commission of Texas* v. *Pullman Co.*, 312 U. S. 496. Consideration of the statutes here involved did not in any way necessitate "a tentative answer which may be displaced tomorrow by a state adjudication." *Railroad Commission of Texas* v. *Pullman Co.*, *supra*, 312 U. S. at 500.

Nor is this a case where a constitutional adjudication can be avoided by a definitive construction of the statutes involved. Cf. *Albertson* v. *Millard*, 345 U. S. 242; *Chicago* v. *Fieldcrest Dairies*, 316 U. S. 168; *Government and Civic Employees* v. *Windsor*, *supra*; *Spector Motor Co.* v. *McLaughlin*, *supra*. Their language occasions no uncertainty as to what they undertake to prohibit or as to whom their prohibitions are directed, and their unconstitutional purpose is unequivocally established by their legislative history and effect recited in the majority opinion below.[4]

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[4] Although inquiry into the *motivation* of legislators is prohibited, the *intent* or *purpose* of the legislation (as well as its effects) is relevant in determining constitutionality. Rice v. Elmore, 165 F. 2d 387, 388-389 (4th Cir. 1947), cert. den. 333 U. S. 875; Davis v. Schnell, 81 F. Supp. 872, 878 *et seq.* (S. D. Ala. 1949), aff'd 336 U. S. 933; see also Bush v. Orleans Parish School

(J.S., App. pp. 12-22.) The District Court was not left in doubt as to the statutes' reach and impact in respect to their application to these appellees. Appellants have not been able to support any reasonable interpretation of the statutes that could render them valid, and it is inconceivable that a state court could so construe them as to avoid their legal infirmities. In sum, the District Court was not presented with an alternative to adjudication of the constitutional issues thus developed. As Judge Soper stated:

> We are advised that Virginia is not alone in enacting legislation seriously impeding the activities of the plaintiff corporations through the passage of similar laws. (43 Va. L. Rev. 1241.) As heretofore noted, the problem for determination is essentially a federal question with no peculiarities of local law. Where the statute is free from ambiguity and their remains no reasonable interpretation which will render it constitutional there are compelling reasons to bring about expeditious and final ascertainment of the constitutionality of these statutes to the end that the multiplicity of similar actions may, if possible, be avoided. (J.S., App. p. 36.)

Appellees submit this conclusion is a wise exercise of judicial administration,[5] and that no other course was open.

Board, 138 F. Supp. 337, 341 (E. D. La. 1956), aff'd 242 F. 2d 156 (5th Cir. 1957); Ludley v. Board of Supervisors, 150 F. Supp. 900, 902-903 (E. D. La. 1957); Adkins v. School Board of City of Newport News, 148 F. Supp. 430, 433-439 (E. D. Va. 1957), aff'd 246 F. 2d 325 (4th Cir. 1957), cert. den. 355 U. S. 869.

[5] The care with which the District Court treated the abstention rule under consideration is evidence of the fact that it declined to pass upon the constitutionality of the 2 other statutes attacked in the Complaints in this case.

CONCLUSION

For the foregoing reasons, the questions presented by appellants are clearly unsubstantial and this motion to affirm should be granted.

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Certificate of Service

I hereby certify that copies of the foregoing motion to affirm have been served by depositing the same in a United States mail box, with first class postage prepaid, to the following counsel for appellants:

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